

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 15,782
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare finding him ineligible for Medicaid based on excess income. The issue for purposes of this appeal is whether the Department erred in refusing to give the petitioner certain deductions. The parties have agreed that a determination in this case does not waive his right to raise additional issues he may have with his ineligibility determination.

FINDINGS OF FACT

1. The petitioner is a disabled man whose sole source of income is a Social Security disability payment of \$869 per month. At the time when this determination was made last Fall, the petitioner's income was \$858 per month.

2. The petitioner was notified following his last review that he would be ineligible for Medicaid for the period from December 1998 through May of 1999 because of excess income. In calculating his eligibility, the Department first calculated his income using SSI-related rules and granted him a standard \$20 deduction for unearned income. For the months of December and January when his income was \$858, he had a net income of \$838. For February

through May when his income was \$869, his countable net income was \$849 per month. These figures were compared with the maximum Medicaid income of \$683 for December and \$691 for the months of January through May 1999.<sup>1</sup> The Department concluded that during this six month period the petitioner had \$5,072 in net income compared with an allowable maximum of \$4,138 allowed for this period, giving him a spend-down of \$934. It next calculated his eligibility under ANFC-related rules which allow his income to be pro-rated and shared with this dependent child which turned out to be a more favorable method for him. (In this method half of his income for each month was compared to one-half of the maximum resource amount above for each month). The result was a spend-down amount of \$527 for the six month period which the Department further reduced by subtracting some unpaid prescriptions presented to them by the petitioner. The petitioner was ultimately notified that he was ineligible for Medicaid until he had incurred \$343.39 in medical expenses for the six month period.

3. Under each of the two methods described above, a further deduction is allowed for child support payments. The petitioner did not receive that deduction. The petitioner and the Department disagree about whether the petitioner makes child support payments within the meaning

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<sup>1</sup> The amount of the maximum went up in January due to a regulation change.

of the regulations.

4. Pursuant to a court order dated August 9, 1996, the petitioner and his child's mother have joint legal and physical responsibility for their child. A custody schedule was set up in the order wherein the child spent an equal number of days every two weeks with each parent. The order also stated that "Transportation responsibilities including the costs and method of travel for the child from one parent to the other and out of state travel shall be as follows:

' "Thusfar [petitioner] has provided for both parents the necessary transportation for the child. However, the parties may agree among themselves and from time to time, on alternative arrangements for transportation.' "

5. The child support order issued by the magistrate with regard to the petitioner's child in August of 1996 stated that "the obligor [petitioner] shall pay child support in the amount of \$0.00 per month. . . ." The order stated further:

The parties agree to an order of no support based on the fact that Obligor's only source of income is Social Security Disability. A benefit of \$204.00 is paid to the payee (currently the Obligee) for the child. The parties agree that this will constitute and satisfy the Obligor's child support obligation and is payable to the Obligee as child support. This amount is higher than what the guideline calls for support of the child.

6. It appears from the weekly shared custody arrangement that the petitioner and his child's mother lived within a reasonable driving distance of each other when the court order was issued. Since that time, however, the

child's mother has moved to Phoenix, Arizona. The result is the petitioner pays to have the child returned to Vermont about once per year at a cost of about \$800 round trip. He would like to have that amount deducted as a child support payment.

7. The petitioner has also asked the Department to deduct in advance the cost of his trips to the pharmacy which he makes about four times per month. The Department has refused to deduct them prospectively but only as they arise and are claimed.

#### ORDER

The decision of the Department with regard to deductions and calculation methods discussed herein is affirmed.

#### REASONS

The regulations governing Medicaid eligibility based on disability direct that the calculation of net countable income include the following step:

(4) Deduct from unearned income the amount(s) used to comply with the terms of court-ordered support or Title IV-D support payments.<sup>2</sup> If unearned income is insufficient, any remaining amounts may be deducted from earned income.

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<sup>2</sup> These are voluntary contracts to pay support made through the Office of Child Support.

M. 243.1

The regulations governing Medicaid eligibility based on a relationship to the ANFC program provide that the same deductions are to be used as are used in the eligibility determination for the ANFC program. M 336. The applicable regulations allow a deduction for the following:

Payments made pursuant to a court order for support or alimony, or an Administrative Order for support issued by the Human Services Board, or a contract between the Office of Child Support and noncustodial parent requiring the payment of support. This income exclusion is limited to payments actually made by a member of the assistance group toward the support of a person(s) outside the assistance group. The payment amount is deducted first from the assistance group's countable earned income with any balance deducted from unearned income.

W.A.M. 2255.1

The ANFC related regulations also allow for a \$50 additional deduction from income for recipients of child support payments when countable income is computed as follows:

The first \$50 in child support payments made by a non-custodial parent on behalf of a child within each calendar month is excluded. When more than one non-custodial parent makes child support payments on behalf of a single child in the same calendar month, the maximum amount of child support to be disregarded in determining the child's eligibility is \$50.

M 352.1

The petitioner argues that he is entitled to some kind of a deduction for child support payments, either the full \$800 spent on transportation or the \$50 per month deduction because his child is being paid Social Security benefits

each month. Each of these arguments requires a finding that the amounts that he pays and the child receives are court ordered child support or a contractual obligation with OCS.

The petitioner is correct that the money he spends on transportation is a payment which could be considered "child support". The state statute governing support of children allows the court to consider "extraordinary travel and other travel-related expenses incurred in exercising the right to parent-child contact" as one of the factors supporting an adjustment to the amount of child support which it orders. 15 V.S.A. § 659(9).

The problem for the petitioner is that the Medicaid regulation for SSI requires that the support be "court-ordered" (or an OCS contract)<sup>3</sup> in order to be deductible. The magistrate's order makes it very clear that the petitioner has no court ordered obligation to make any payment at all as child support or for transportation. The petitioner does not dispute that fact but relies rather on the court's subsequent order with regard to transportation and travel arrangements. However, that order states that while the petitioner had taken it upon himself to provide transportation for the child to that point, the future costs were to be agreed upon by the parties. There is no order from the court in that second document requiring the

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<sup>3</sup> The petitioner has raised no argument and offered no evidence that he has made a contract for support with OCS.

petitioner to provide or to expend any amount of money on transportation for the child.

The truth of the matter is that the petitioner's expenditures are voluntary, and not court-ordered. From the petitioner's point of view, they are necessary if he is to have regular contact with his daughter. While that may be so, he has not been ordered to make those expenditures by a court or through contract with OCS. There are many expenditures which parents voluntarily make which they feel are necessary for the support of their children. However, the Medicaid regulations do not allow the deduction of all expenses related to the care of children, only those amounts which must be paid through court order or contract with OCS. The petitioner, therefore, cannot be given a deduction for these expenses.<sup>4</sup>

Neither can the petitioner be given a \$50 per month deduction because of the payment of child support. Although the wording is not clear in this regulation (no doubt leading to the petitioner's confusion), the intent of this regulation is to allow the recipient of child support a deduction of the first \$50 in support received in any

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<sup>4</sup> The petitioner could ask that his support order be modified to include these expenses in a recalculation of child support. Since his situation seems to have changed dramatically since the support order was issued (in addition to her cross-country move, the child's mother has also become a Social Security recipient since the initial order) it might be wise to have the order reflect the current status of the parties.

calendar month. The purpose of this regulation is to encourage custodial parents to cooperate in obtaining child support by not counting some of the money they receive against them for purposes of program eligibility. See Fair Hearing No. 10,341. Even if this regulation could be read to give the payor a deduction for paying out child support (which would be inconsistent with the regulation which would allow him to deduct all of his court ordered child support), the \$50 can only be deducted if a child support payment is made by a non-custodial parent. While the \$204 per month social security benefit is in the nature of child support and is paid each month, it is not paid by the petitioner out of his funds, but rather by a third-party governmental agency based on a statutory entitlement. The payment to the child is not in the petitioner's control and in no way reduces the petitioner's income. The reward and deduction system set up in this regulation for persons who make their child support payments on a monthly basis is simply not applicable to the petitioner. It must be concluded, therefore, that the Department correctly found that the petitioner was not entitled to a deduction under this regulation.

Finally, the petitioner argues that he should receive spend-down deductions now based on his projected costs of transportation to a pharmacy over the next six months. The regulations do allow a person with excess income who can

"show that his or her Medicaid group has paid or incurred medical expenses. . .at least equal to the difference between its countable income and its Protected Income Level" to become eligible for Medicaid. M 402. Non-covered medical expenses, including transportation to secure these medical services (including obtaining over the counter drugs and supplies), can be deducted. M 432. In order to receive these deductions, the applicant "is required to present a "reasonable estimate" of the cost of transportation. M 432. Generally, the spend down computation regulations require the presentation and deduction of expenses as they are incurred. However, they allow the prospective deduction of expenses only in two very explicit circumstances:

In no case should anticipated medical expenses other than health insurance expenses or the estimated cost of medically necessary over-the-counter drugs be deducted before they are actually incurred. An expense is incurred on the date liability for the expense begins. Anticipated health insurance expenses may be allowed if it can be reasonably assumed that the coverage will continue during the accounting period.

M 423

The regulation clearly allows only the two categories listed to be anticipated; all other expenses are counted when incurred. The pharmacy transportation expenses sought by the petitioner are not included in the two anticipatory categories and so cannot be counted "up front" under the regulations to reduce the spend-down amount. The Department

was thus correct in making this ruling under its regulations. The petitioner has put forth no persuasive argument that the Department's regulation that the Department has acted illegally in not including future transportation costs in the anticipatory category.

Therefore, the decision of the Department must be upheld. 3

V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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